

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

_____	X	
In Re VEECO INSTRUMENTS, INC.,	:	05-MD-1695 (CM)
SECURITIES LITIGATION	:	
_____	X	
THIS DOCUMENT RELATES TO:	:	
_____	X	
EDWARD J. HUNEKE, derivatively on behalf of	:	05-CV-10224 (CM)
VEECO INSTRUMENTS, INC.,	:	
	:	
Plaintiff(s),	:	
	:	
vs.	:	
	:	
EDWARD H. BRAUN, et al.,	:	
	:	
Defendant(s),	:	
_____	X	
AUGUST SCHUPP, III, derivatively on behalf of	:	05-CV-10225 (CM)
VEECO INSTRUMENTS, INC.,	:	
	:	
Plaintiff(s),	:	
	:	
vs.	:	
	:	
EDWARD H. BRAUN, et al.,	:	
	:	
Defendant(s),	:	
_____	X	
DAVID ALTMAN, derivatively on behalf of	:	05-CV-10226 (CM)
VEECO INSTRUMENTS, INC.,	:	
	:	
Plaintiff(s),	:	
	:	
vs.	:	
	:	
EDWARD H. BRAUN, et al.,	:	
	:	
Defendant(s).	:	
_____	x	

**DECLARATION OF PAUL J. SCARLATO IN SUPPORT OF  
GOLDMAN SCARLATO & KARON, P.C.'S  
APPLICATION FOR AWARD OF ATTORNEYS' FEES  
AND REIMBURSEMENT OF EXPENSES**

I, Paul J. Scarlato, Esquire, declare as follows:

1. I am a shareholder of the law firm of Goldman Scarlato & Karon, P.C. (the "Firm"). I submit this Declaration in support of the Firm's application for an award of attorneys' fees in connection with services rendered in the above action and the reimbursement of expenses incurred by the Firm related to the investigation, prosecution and settlement of claims in the course of this litigation from inception through March 14, 2008.
2. My Firm served as counsel to plaintiff Edward J. Huneke in this litigation. My Firm's compensation for services rendered in this case was wholly contingent on the success of this litigation, and was totally at risk.
3. Brief biographies of my Firm and the attorneys who have worked on this case are attached hereto as Exhibit "1."
4. During the period of time from inception through March 14, 2008, my Firm performed primarily the following work on behalf of the plaintiff in connection with the investigation and prosecution of the litigation: drafting and filing the complaint and amended complaints; drafting and serving discovery on defendants and non-parties; review and analysis of thousands of documents produced by defendants in response to plaintiffs' discovery requests; taking of and attendance at depositions; trial preparation, including preparation of final pre-trial order; attendance at mediation; conducting additional settlement negotiations; drafting settlement agreement; and, drafting briefs and declarations in support of settlement approval.

5. The total number of hours spent on this litigation by my Firm from inception through March 14, 2008 is 1,544 hours. The total lodestar amount for attorney time, calculated at the Firm's current hourly rates is \$688,290.

6. The schedule attached hereto as Exhibit "2" is a detailed summary indicating the amount of time spent by each attorney of my Firm who was involved in this litigation from inception through March 14, 2008 and the total lodestar amount is calculated on the current rate basis. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my Firm, which are available at the request of the Court.

7. From inception through March 14, 2008, my Firm has expended a total of \$23,356.89 in non-reimbursed expenses in connection with the prosecution of this litigation. These expenses are broken down as follows:

<b><u>EXPENSES</u></b>	<b><u>AMOUNT</u></b>
Assessment Payment(s) to Plaintiffs' Common Fund	\$17,500.00
Internal Reproduction/Copies	\$585.40
Commercial Copies	\$603.51
Computer Research	\$212.80
Document Retrieval	\$2,640.88
Filing Fees	\$85.00
Telephone/Fax/Email	\$450.91
Postage/Express Delivery/Couriers	\$137.97
Travel: Train fare, Ground Travel, Meals	\$1,140.42

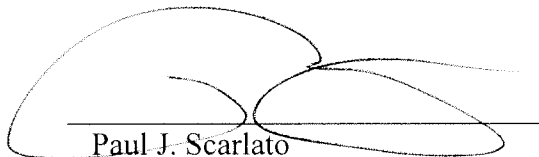
**TOTAL EXPENSES:**

**\$23,356.89**

8. The expenses incurred pertaining to this case are reflected in the books and records of this Firm maintained in the ordinary course of business. These books and records are prepared from expense vouchers and check records and are an accurate record of expenses incurred.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief.

EXECUTED this 14th Day of March, 2008.



Paul J. Scarlato

## **Exhibit 1**

**GOLDMAN SCARLATO & KARON, P.C.**

GOLDMAN SCARLATO & KARON, P.C., with offices in Philadelphia, PA, and Cleveland, OH, concentrates its practice in class action litigation in state and federal courts nationwide. The Firm aims to provide efficient, cost effective, and high quality legal representation to its clients.

The Firm was formed in 2005 by Mark S. Goldman, Paul J. Scarlato, and Daniel R. Karon as a spin-off of Weinstein Kitchenoff Scarlato Karon & Goldman Ltd., of which Mr. Goldman and Scarlato were founding members, and Mr. Karon was a name partner. Each of the lawyers at Goldman Scarlato & Karon, P.C., has considerable experience in complex commercial litigation prosecuting shareholder derivative suits and class actions in the areas of securities fraud, antitrust, ERISA, and consumer fraud, principally on behalf of individuals and businesses that have been victimized by the unlawful actions of others. The Firm's attorneys achieved major civil recoveries for their clients. A few examples of the Firm's lawyers' achievements follow.

In securities fraud cases, for example, Firm member Paul Scarlato recently served as co-lead counsel in *In re: Corel Corporation Securities Litigation*, which resulted in a substantial settlement for the class. Mr. Scarlato also was one of the three lead attorneys for the plaintiff class of shareholders in *Kaufman v. Motorola, Inc.*, which settled for \$25 million dollars weeks before trial., and was one of the lead plaintiff's counsel in which his prior firm was sole lead counsel, *Seidman v. American Mobile Systems, Inc.*, which resulted in a sizeable settlement for the plaintiff class again on the eve of trial.

The Firm's lawyers have been active participants in numerous price-fixing antitrust class actions. In *In re Vitamins Antitrust Litigation*, Messrs. Goldman and Karon represented direct purchasers of vitamins, niacin and choline chloride who claimed that they paid prices which were in-

flated by an industry-wide price-fixing and market allocation scheme. Settlements of over \$1 billion were obtained for the members of the Class. In *In Re NASDAQ Antitrust Litigation*, Mr. Goldman represented investors in NASDAQ stocks who were harmed by brokerage firms that colluded to fix the bid and ask spread of the securities. The federal court in New York approved settlements totaling \$1.1 billion in that case. Also, in *In re Brand Name Prescription Drugs Antitrust Litigation*, Mr. Goldman represented independent pharmacies that were harmed by the major brand name drug manufacturers' differential pricing scheme. Settlements of approximately \$700 million were obtained for the class of pharmacists in the case.

Courts have recognized the quality of the Firm's abilities. In one such instance, Mr. Goldman brought and successfully settled an ERISA class action on behalf of insureds against two related major health insurance providers that had inflated the consumers' deductible obligation under their major-medical insurance. Subscribers received substantial premium refunds under the court-approved \$1.6 million settlement in *Gilman v. Independence Blue Cross*. In approving the settlement of the case, the federal court in Philadelphia observed, "The class has been well served by highly qualified counsel . . . ."

**THE FIRM'S ATTORNEYS**

**MARK S. GOLDMAN.** Since 1986, Mark Goldman has concentrated his practice in complex litigation involving violations of the federal securities and antitrust laws, ERISA, and state consumer protection statutes. Mr. Goldman served as co-lead counsel in a number of class actions brought against life insurance companies, challenging the manner in which premiums are charged during the first year of coverage. In the area of securities litigation, Mr. Goldman recently served as co-lead counsel in *Graf v. Cyber-Care*, a securities fraud class action in the Southern District of Florida, and he is also prosecuting a number of insider trading cases brought against company insiders who, in violation of Section 16(b) of the Securities Exchange Act of 1934, engaged in short swing trading. Mr. Goldman currently serves as co-chair of the expert's committee in *In re Air Cargo Antitrust Litigation*, and also represented direct purchasers of bulk vitamins in a price-fixing and market allocation antitrust action, *In re Vitamin Products Antitrust Litigation*, where he helped coordinate pre-trial discovery conducted by dozens of firms jointly prosecuting the action.

Mr. Goldman earned his undergraduate degree from the Pennsylvania State University in 1981 and his law degree from the University of Kansas School of Law in 1986. He is a member of the Pennsylvania bar.

**PAUL J. SCARLATO.** Mr. Scarlato has concentrated his practice principally in litigation of securities fraud and shareholder derivative cases, and ERISA class action matters since 1989. He has litigated numerous such cases involving companies in a broad range of industries, and has litigated many cases involving financial and accounting fraud.



Mr. Scarlato recently served as one of the principle lawyers for the plaintiffs in a shareholder derivative action pending in Cook County Illinois on behalf of the nominal defendant, The Boeing Company. In securities fraud cases, Mr. Scarlato was one of three lead attorneys for the class in *Kaufman v. Motorola, Inc.*, which settled weeks before trial, and along with Mr. Weinstein of his predecessor firm, was lead counsel, *Seidman v. American Mobile Systems, Inc.*, which resulted in a settlement for the plaintiff class again on the eve of trial. Mr. Scarlato recently served as co-lead counsel in *In re: Corel Corporation Securities Litigation*.

Mr. Scarlato graduated from Moravian College in 1983, and received his Juris Doctor degree from the Delaware Law School of Widener University in 1986. Mr. Scarlato served as law clerk to the Honorable Nelson Diaz, of the Court of Common Pleas of Philadelphia County, and thereafter as law clerk to the Honorable James T. McDermott, Justice of the Pennsylvania Supreme Court. Mr. Scarlato then became a member of the tax department of a major “Big Six” accounting firm where he provided a broad range of services to large business clients in a variety of industries.

Mr. Scarlato is a member of the bars of the Commonwealth of Pennsylvania and the State of New Jersey, and those of various federal district and circuit courts.

**DANIEL R. KARON.** Mr. Karon began his class action career with a large Chicago law firm, and is now resident partner in Goldman Scarlato & Karon, P.C.’s Cleveland office. Mr. Karon represents individuals and corporations in domestic and international antitrust class action matters, consumer fraud and ERISA class actions.

Along with Mr. Goldman, Mr. Karon participated actively in the *In re Vitamins Direct Purchaser Antitrust Litigation*, a nationwide price fixing class action that resolved for \$1.75 billion; the *In re NASDAQ Market-Makers Antitrust Litigation*, a nationwide price fixing class action that settled for \$1.027 billion; the *In re Monosodium Glutamate Antitrust Litigation*

a nationwide price fixing class action that settled for \$130 million; the *In re Methionine Antitrust Litigation*, a nationwide price fixing class action that settled for \$101 million; and the *In re Sorbates Direct Purchaser Antitrust Litigation*, another nationwide price fixing class action that settled for \$70 million. He recently served as co-lead counsel in *Pearman v. Crompton Corp.*, No. 9192 (Tenn. Cir. Ct. Claiborne Cty. June 21, 2005) (\$4,250,000 settlement relating to price-fixed EPDM); *Pearman v. Crompton Corp.*, No. 9191 (Tenn. Cir. Ct. Claiborne Cty. Mar. 3, 2006) (\$2,117,000 settlement relating to price-fixed NBR); *Pearman v. Crompton Corp.*, No. 9214 (Tenn. Cir. Ct. Claiborne Cty. Mar. 3, 2006) (\$1,400,000 settlement relating to price-fixed neoprene); and *D.R. Ward Constr. Co. v. Rohm & Haas Co.*, MDL 1684 (E.D. Pa. 2004) (concerning price-fixed plastic additives).

Mr. Karon currently serves as discovery co-chair in the *In re Bulk Graphite Antitrust Litigation*, class certification co-chair in the *In re Pressure Sensitive Labelstock Antitrust Litigation*, and briefing co-chair in the *In re EPDM Antitrust Litigation* and *In re Carbon Black Antitrust Litigation*, and as co-lead counsel in a number of indirect purchaser price-fixing cases.

Mr. Karon is a member of Loyola University-Chicago's Institute for Consumer Antitrust Studies' U.S. Advisory Board and of the Ohio Academy of Trial Lawyers' *Ohio Trial* magazine editorial board. He is also active in the American Bar Association's Antitrust Law Section and serves as co-chair for the ABA's Litigation Section, Class Action and Derivatives Suits Committee's Antitrust Subcommittee.

Mr. Karon earned his B.A. from Indiana University and his law degree from The Ohio State Moritz University College of Law, where he was a member of the Ohio State Journal of Dispute Resolution. He has published numerous law review and bar journal articles on class action litigation and other topics, and he lectures nationally on class action matters. He is a

member of the Ohio and Illinois bars, and is admitted to practice before the U.S. Court of Appeals for the Seventh Circuit, the U.S. District Court for the Northern District of Ohio, and the U.S. District Court for the Northern District of Illinois.

**THEODOR A. SWANSEN.** Since his admission to the bar in 1999, Mr. Swansen has concentrated his practice in the field of litigation, including products liability, premises liability and class action litigation. As an associate with the Firm, Mr. Swansen has participated in class action cases alleging securities and consumer fraud claims. Mr. Swansen is a member of the bars of Pennsylvania and New Jersey and is admitted to practice before the United States District Court for the District of New Jersey.

Mr. Swansen received his Bachelor of Business Administration *summa cum laude* and his Masters of Business Administration from Temple University in 1992 and 1996, respectively. Mr. Swansen received his Juris Doctor degree from Temple University's James E. Beasley School of Law in 1999.

**BRIAN D. PENNY.** Mr. Penny received his Bachelor of Arts degree from Davidson College, Davidson, North Carolina, in 1997 and earned his Juris Doctor degree from the Dickinson School of Law of the Pennsylvania State University in 2000. After graduating from law school, Mr. Penny served as law clerk to the Honorable John T.J. Kelly, Jr., Senior Judge of the Superior Court of Pennsylvania. Since joining the Firm, Mr. Penny has focused his practice on complex and class action litigation principally in the area of securities fraud.

Mr. Penny was a key member of the plaintiffs' team that prosecuted the *Broadcom Securities Litigation*, which resulted in a settlement of \$150 million. Mr. Penny was also a key member of the plaintiffs' team that prosecuted the *AOL Time Warner Securities Litigation*, which resulted in a settlement of over \$2.5 billion for investors.

**LAURA S. KILLIAN.** Laura Killian joined the Firm as an associate in 2005. Ms. Killian graduated from the Dickinson School of Law of the Pennsylvania State University in 2000. She received her Bachelor's Degree from Pennsylvania State University. Ms. Killian is admitted to practice in Pennsylvania and the United States District Court for the Eastern District of Pennsylvania. Since joining the Firm, she has concentrated her practice on complex and class action litigation principally in the area of securities fraud, and was recently a member of the trial team in the *JDS Uniphase Corporation Securities Litigation* trial.

**SHERIF K. MOUSSA.** Mr. Moussa joined the firm as an associate in 2006. He graduated from Fordham University in 1996 and received his Juris Doctor and a Master's Degree from Duke University in 1999. While attending Duke he was awarded the J. Paul Coie Fellowship Endowment for the Class of 1999 and was Staff Editor of the *Duke Journal of Comparative & International Law*. He is admitted to practice in New York and Connecticut.

Mr. Moussa is a member of the team prosecuting a securities fraud class action against America International Group.

**CARLY J. RITTENHOUSE.** Ms. Rittenhouse joined the firm as an associate in 2006. She graduated cum laude from Florida State University in 1999 with a Bachelor of Science and received her Juris Doctor from Villanova University School of Law in 2003. She was a law clerk for the Honorable Richard J. Hodgson in the Pennsylvania Court of Common Pleas.

## **Exhibit 2**

**In re Veeco Instruments, Inc. Securities Litigation****Goldman Scarlato & Karon, P.C.****Time Report**

<b>Attorney/Paralegal</b>	<b>Current Rate</b>	<b>Total Hours</b>	<b>Total Lodestar</b>
Mark S. Goldman (P)	\$525	55.40	\$ 29,085.00
Brian D. Penny (A)	\$375	741.70	\$ 278,137.50
Carly J. Rittenhouse (A)	\$325	19.80	\$ 6,435.00
Paul J. Scarlato (P)	\$525	693.00	\$ 363,825.00
Theodor A. Swansen (A)	\$375	25.30	\$ 9,487.50
James J. Rapone (PL)	\$150	8.80	\$ 1,320.00
<b>Total</b>		<b>1544.00</b>	<b>\$ 688,290.00</b>

Status:

(P) Partner

(A) Associate

(PL) Paralegal